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No. 88-1848

In the Supreme Court of the United States

OCTOBER TERM, 1989

GENERAL MOTORS CORPORATION, PETITIONER

v.

ARLIE GLEN SKELTON, ET AL., RESPONDENTS

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

SECOND SUPPLEMENTAL BRIEF FOR THE PETITIONER PURSUANT TO RULE 22.6

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Pursuant to Rule 22.6 of the Rules of this Court, petitioner General Motors Corporation hereby advises the Court of an intervening development that occurred subsequent to the date of GM's last filing. On September 20, 1989, the United States Court of Appeals for the Seventh Circuit dismissed GM's appeal from the district court's order of May 1, 1989, which granted an attorneys' fee multiplier of 1.6 (Pet. App. 69a-72a). The district court's order was entered on remand from the court of appeals' decision that currently is before this Court for review on GM's petition for certiorari. See Pet. 9.

The Seventh Circuit has now held that GM's second appeal in this litigation is barred by law of the case principles and by the terms of the class action settlement agreement, which the court construed to preclude further appellate review. A copy of the court of appeals' order is reprinted in the appendix to this brief.

In light of the Seventh Circuit's recent order, it is clear that no further proceedings will occur in the lower courts on the merits of the attorneys' fee issue and that the judgment from which GM has sought certiorari represents the court of appeals' final and conclusive determination of that issue. In these circumstances, any question that the case is interlocutory has been dispelled, and the petition is plainly ripe for this Court's review at this time.

Respectfully submitted.

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SEPTEMBER 1989

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

September 20, 1989

Before

HON. RICHARD D. CUDAHY, *Circuit Judge*

HON. JOHN L. COFFEY, *Circuit Judge*

HON. JOEL M. FLAUM, *Circuit Judge**

No. 89-2118

ARLIE GLEN SKELTON, JR., *et al.*,
Plaintiffs-Appellees,

vs.

GENERAL MOTORS CORPORATION,
Defendant-Appellant.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division

Nos. 79 C 1243, 80 C 2151
85 C 4805, 86 C 4986
86 C 4987

Judge John A. Nordberg

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* The above motions were directed to the original panel hearing this case: Chief Judge Bauer, Judge Cudahy, and Judge Coffey. Due to a subsequent conflict of interest, Judge Bauer has recused himself and Judge Flaum has been substituted.

This matter comes before the court for its consideration of the following documents:

1. "APPELLEES' MOTION TO DISMISS AND FOR IMPOSITION OF SANCTIONS PURSUANT TO RULE 38 OF THE FEDERAL RULES OF APPELLATE PROCEDURE AND MEMORANDUM IN SUPPORT THEREOF" filed herein on June 13, 1989, by counsel for the appellees.

2. "RESPONSE OF APPELLANT GENERAL MOTORS CORPORATION TO APPELLEES' MOTION TO DISMISS APPEAL AND FOR IMPOSITION OF SANCTIONS" filed herein on June 26, 1989, by counsel for the appellant.

3. "REPLY OF APPELLEES TO GENERAL MOTORS CORPORATION'S RESPONSE TO APPELLEES' MOTION TO DISMISS AND FOR IMPOSITION OF SANCTIONS" filed herein on June 29, 1989, by counsel for the appellees.

Appellees moved to dismiss the present appeal, arguing that the original settlement agreement entered by the parties below precluded reconsideration of the amount of any attorney fee multiplier and arguing that the law of the case further precluded reconsideration of whether a multiplier was appropriate, citing Skelton v. General Motors Corp., 860 F.2d 250 (7th Cir. 1988). Appellees also moved for sanctions under Federal Rule of Appellate Procedure 38 and double costs for having to contest the frivolous appeal. We agree that the law of the case and settlement agreement preclude appellants from further appeal of this issue and that attorneys fees for opposing counsel is appropriate. Therefore,

IT IS ORDERED that appeal 89-2118 is hereby DISMISSED.

IT IS FURTHER ORDERED that appellees shall submit by October 5, 1989, a statement representing their attorney fees reasonably expended on the above appeal. Appellants shall respond with any objections within ten days of the filing of appellees' statement of fees.